

STATE OF MICHIGAN  
COURT OF APPEALS

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JULIA WALKER and THOMAS WALKER,

Plaintiffs-Appellants,

v

INTERNATIONAL MANOR, INC.,

Defendant-Appellee.

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UNPUBLISHED

August 31, 2001

No. 223895

Wayne Circuit Court

LC No. 97-739895-NO

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10), in this slip and fall action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Julia Walker broke her leg when she fell on an uneven sidewalk on premises owned by defendant and leased to the Secretary of State. Plaintiffs brought this negligence action, alleging that defendant failed to maintain the property in a reasonably safe condition. The trial court granted defendant's motion for summary disposition, finding that the danger was open and obvious, and defendant owed no duty to plaintiffs.

Possessors of land have a legal duty to exercise reasonable care to protect their invitees from dangerous conditions on the land. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 609; 537 NW2d 185 (1995). If a condition is open and obvious, this duty does not apply unless the condition poses an unreasonable risk of harm. *Milliken v Walton Manor Mobile Home Park, Inc.*, 234 Mich App 490, 498-499; 595 NW2d 152 (1999). The test for an open and obvious danger is whether an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

To avoid summary disposition, plaintiffs were required to present evidence upon which a rational factfinder could conclude that despite the open and obvious nature of the defect, it posed an unreasonable risk of harm. *Weakley v Dearborn Heights*, 240 Mich App 382, 386; 612 NW2d 428 (2000). Uneven pavement is not ordinarily actionable unless unique circumstances surrounding the area made the situation unreasonably dangerous. *Id.*

Although their expert witness opined that the sidewalk posed an unreasonable risk of harm, plaintiffs did not identify any unusual circumstances that would support that conclusion. Plaintiffs failed to establish that defendant breached a duty, and the court properly granted summary disposition to defendant.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin